

IN THE MATTER OF	:	BEFORE THE
PENTECOSTAL CHURCH OF GOD	:	HOWARD COUNTY
INTERNATIONAL MOVEMENT IN	:	BOARD OF APPEALS
SPANISH	:	
Petitioner	:	HEARING EXAMINER

Section 130.I.3.c Request to Extend Time
Limits for Building Permits to Establish
Conditional Use Granted in BA Case No.
06-015C

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DECISION AND ORDER

On April 21, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard oral argument in an evidentiary hearing¹ concerning a written request by Pentecostal Church of God International Movement in Spanish (the "Petitioner"), for a two year extension of the time limit to obtain all building permits and a three year extension of the time period to complete substantial construction from the date of the decision required to establish the conditional use approved in Howard County Board of Appeals Case No. BA 06-015C, pursuant to Section 130.I.3.c of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that copies of the requested time extension were sent by certified mail to adjoining property owners and persons who testified in BA 06-015C.

I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Ronald Schimel, Esquire, represented the Petitioner. Brian Collins testified to the Petitioner's efforts in establishing the conditional use. George A. Ford, Jr., who requested oral

¹ Section 130.I.3.c(3) provides for a "work session" when oral argument is requested. In a previous case, I determined that the most reasonable interpretation of a work session would be to equate it with an evidentiary hearing and require all the protections of due process be accorded in that proceeding, including recording testimony under oath with the right of cross-examination.

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argument on the proposed extension and Vincent Orlando, adjoining property owners, testified in relation to the extension. Joan Lancos also testified in relation to the extension as a representative of the Hickory Ridge Village Board, having presented a resolution from the board authorizing her to speak on its behalf.

Background

The subject property, 10689 Owen Brown Road, is located in the 5th Election District at the southeast corner of Owen Brown Road and Cedar Lane in Columbia (the "Property"). It is improved with a 6,486 square foot, 150-seat church building located in the northeast portion of the Property about 38 feet from Owen Brown Road and 88 feet from the east side lot line. It is zoned R-SC (Residential – Single Cluster).

The August 8, 2006 Decision and Order issued in BA Case No. 06-015C granted the Petitioner a conditional use for a structure used primarily for religious activities. The proposed religious facility shown on the Conditional Use Plan was 20,000 square feet in size and covered about covers 8.9 percent of the Property. Type "D" and "E" (Screen) landscaping will be installed along the east perimeter of the Property adjacent to the homes in the Hickory Crest community. The Findings of Fact (No. 8, page 4) also stated as follows.

... Sunday school begins at 2:00 p.m. and services are held at 3:00 p.m. There are currently about 120 members of the congregation. Weekday evening meetings include Bible studies, choir rehearsals, and other administrative, religious, and social meetings of generally no more than 80 people.

The Decision and Order concluded that the proposed religious facility consisted of typical religious and social activities that will take place only on weeknights and weekends.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts.

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1. The operative date for tolling Section 130.I.3.a's requirement that an approved conditional use be established by obtaining building permits within two years is August 8, 2006, the issuance date of the BA 06-015C Decision and Order.

2. By letter dated February 21, 2008 (the "Extension Request Letter"), the church, through christopher consultants (sic), requested a two-year extension of the two-year time limit to obtain a building permit and a three-year extension of the three-year time limit to complete substantial construction.

3. As required by Section 130.I.3.c(2) of the Zoning Regulations, the Petitioner sent by certified mail copies of the Extension Request Letter to adjoining property owners and persons who testified in BA 06-015C.

4. By letter dated February 29, 2008, George A. Ford, Jr., who testified at the BA 06-015C hearing, requested oral argument on the time extension request as permitted by Section 130.I.3.c(3).

5. The Extension Request Letter stated, and Brian Collins testified to, the following actions to establish the conditional use, as required by Section 130.I.3.c(1).

- a. The church has been negotiating with the property owner, the Abiding Savior Lutheran Church (the "existing church") to purchase a portion (apparently) of the site. The consultants met with the Department of Planning and Zoning ("DPZ") to determine whether the sale would affect the original conditional use Decision and Order.
- b. Between September and November 2006, the consultants investigated a discrepancy between the County GIS and a field survey concerning the location of a streambed and wetlands. Because the required buffer had shifted, they met with DPZ and revised the SDP. By letter dated December 4, 2007, Bob Lalush of DPZ informed the consultants

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that the proposed revisions to the site development plan ("SDP") substantially conformed to the plan approved in BA 06-015C.

- c. The church contracted with an architect to prepare two designs for the religious facility. The board reviewed the designs and approved one. The architect is now refining the design.
- d. A geotechnical engineer prepared a soil report in relation to the potential presence of rock on the site.
- e. Christopher consultants prepared a detailed stormwater management analysis to determine the required location and type of stormwater management facility.
- f. On January 16, 2008, the consultants submitted a plat (F-08-123) and an SDP (SDP-08-067) to DPZ. DPZ is currently reviewing the SDP.
- g. DPZ requested christopher consultants to replace the stormwater management facility shown on the Conditional Use Plan and the SDP plan with a low-impact development system.

6. Mr. Collins testified that there has been no change to vicinal properties since the original petition was granted.

7. In response to questioning from Mr. Ford, Mr. Orlando, and Ms. Lancos, Mr. Collins stated that the stormwater management pond was eliminated at the County's request in favor of low impact development techniques because of the poor quality of soil on the site. These techniques use existing grades and vegetation to filter the water. Because the Petitioner is required to manage all impervious surfaces, providing some form of management would reduce the runoff to adjoining properties.

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8. Mr. Ford testified that the water flow from Owen Brown Road comes across to the site and flows into his community's storm management facility. He related the neighborhood's problems with late night noise and one instance of fighting and expressed frustration with to how the police managed these problems. Wind blows piles of leaves on the site onto his community's properties. He also stated the church is some 700 square feet larger and that a 150-foot wall has replaced the trees shown on the Conditional Use Plan. During cross-examination, he stated that he did not know the church affiliation of the persons making the late night noise.

9. Ms. Lancos testified that the community is experiencing repeated problems with late night noise levels at the existing religious facility and requested that I expressly require the existing church to comply with the county noise ordinance and that both religious facilities end all activities at 10:00 p.m. as a condition of approval. She explained that several area communities are senior housing developments.

10. The Pentecostal Church of God continues to share use of the existing religious facility with its owner, the Abiding Savior Lutheran Church, and was sharing use of this facility at the time of the original Decision and Order in BA Case No. 06-015C.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. Lapse of Decision Approving a Conditional Use (Section 131.I. 3)

Under Section 130.I.3.a, a Decision and Order approving a conditional use becomes void unless a building permit conforming to the plans for which the approval was granted is obtained within two years. Section 131.I.3.c(4) authorizes the Hearing Authority to grant the request if it finds that establishment of the use in accordance with the approved conditional use plan has been diligently pursued. If oral argument is presented on the request, the Hearing Authority may deny

the request if any of the oral arguments allege changes have taken place in the circumstances which led to the original decision to approve the conditional use. Additionally, Section 131.13(c) authorizes the Hearing Authority to grant up to two extensions of this time limit, not to exceed three years each. Such extensions may be granted if the property owner, prior to the expiration of the conditional use approval, explains in detail the steps that have been taken to establish the use.

In this case, there is no dispute that the controlling date for establishing the conditional use is August 8, 2006. The Petitioner submitted the Extension Letter Request to the Hearing Authority in a timely manner, February 21, 2008, several months before the August 8, 2008 establishment of use deadline.

The Extension Letter Request and Mr. Collins' testimony clearly show the Petitioner has diligently pursued establishing the conditional use, having spent some 19 months preparing the SDP and revising it, in part, in response to DPZ's request to modify the stormwater management system. The Petitioner also submitted, and the County processed, the required final subdivision plans and environmental permits concurrently with the SDP.

II. Oral Argument Arguments

1. A Preliminary Note on Association Representation

In the interest of making the Hearing Examiner's Rules of Procedure and decision-making process more transparent to the Howard County community, I would first like to address the matter of association representatives. Hearing Examiner Rule 6.3 controls who may testify in this capacity.

Representatives of Associations. An individual representing any association must substantiate that he or she is authorized to speak for and present the views of that association. The authorization may consist of a duly adopted resolution of the

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association signed by the president or attested by the secretary. The individual testifying must state the number of members in the association and its geographic boundaries.

I permitted Ms. Lancos to testify as an association representative because she presented such a resolution from the Hickory Ridge Village Board. I did not permit Mr. Orlando to testify as such because he had no authorization. Nor did I permit Mr. Orlando to submit as authorization, on Mr. Schimel's objection, a hastily written note drafted during the proceeding by someone apparently affiliated with the Hickory Crest Community Association. That note plainly did not comply with the requirements of Rule 6.3 and Maryland case law.

During my exchange with Mr. Orlando on this matter, he argued that my decision not to permit him to testify as an association representative was prejudicial. In his words, the evidence of a community representative has more weight or value than evidence presented by him as an adjoining property owner. This interpretation of Rule 6.3 misstates its import. The requirement that an individual provide authorization to speak as an association representative is to ensure the individual is really speaking for and presenting the views of the association, not his or her own views. It is a procedural formality only and has no substantive bearing on the weight I assign to evidence. Rule 9.1 controls evidentiary matters and provides, in part, that the Hearing Examiner is to consider and give appropriate weight to "any relevant evidence." In a nutshell, relevant evidence is data that most people would believe has something to do with the controversy at issue, which in this case is (1) whether the church has diligently pursued establishing the approved conditional use plan, and (2) whether any changes have taken place in the circumstances which led to the original decision to approve the conditional use.

2. The Community's Testimony/Relevant Evidence

A. Noise. In this case, the testimony presented by adjoining property owners and an association representative about noise and activities at the existing religious facility has limited relevance. While I am sympathetic with the neighborhood's continuing frustration with late night noise levels, I have no authority to impose limitations on the evening hours of that facility because the issue is not properly before me, as it concerns the religious facility conditional use approved in BA Case No. 83-14.

Nor am I permitted to impose any conditions on the existing religious facility because it is located on the same property as the religious facility conditional use in this case. An approved conditional use applies to that portion of the site designated for the use, not to other uses on the site or to the property owner. However, as Ms. Lancos observed, Section 130.L permits DPZ to take action to revoke a conditional use if the conditional use site is used, developed, or maintained in violation of the Zoning Regulations. If the violations are not corrected, Section 130.L permits DPZ to send a copy of the revocation violation to the Hearing Authority for a revocation hearing and authorizes the Hearing Authority to revoke the use or reaffirm it subject to additional conditions of approval.²

What is relevant in this case is the neighbors' legitimate concern about activities and related noise problems at the future religious facility. Although there was no direct evidence that the congregants of the Pentecostal Church of God are at least partly responsible for the problems at the existing religious facility, the record convinces me that this is a reasonable conclusion, as the Decision and Order in BA Case No. 06-015C specifically found the Pentecostal Church

² In that case, the Board of Appeals approved an expansion of the church, which when constructed in 1963 was a permitted use. The Board concluded that the present and proposed intensity of uses were adequate, properly located, and suitably screened from adjoining residential uses but made no findings concerning the nature of the uses or their hours. The record is silent about the Pentecostal church's shared use of the facility.

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operates out of the existing facility and holds religious and social activities that take place on Sunday afternoons and during the evening. When the Hearing Examiner granted the requested conditional use, he determined that these activities—which will continue in the new facility--were typical of the use.

Because the late night activities at issue here can only be viewed as atypical of the use, the record leads me to conclude these activities have the potential to continue in the new religious facility because the same evening activities will be part of the use. This situation would lead to noise problems and adverse effects unaddressed in the original Decision and Order. I therefore conclude the circumstances leading to the original decision to approve the conditional use have changed and that it is appropriate to impose as a condition of approving the requesting extension the requirement that all evening religious and social activities at the religious facility to be constructed pursuant to BA 06-015C end at 10:00 p.m.

As to Ms. Lancos' request that I also expressly require the Petitioner to comply with the noise ordinance, a requirement to this effect is redundant because the ordinance already applies.

2. Stormwater management. In this case, the Petitioner originally proposed a stormwater management facility south of the proposed church building, and the Petitioner's witness agreed to locate it as far west as allowable. Based on this agreement, the Hearing Examiner concluded in relevant part that the proposed use would not generate adverse conditions beyond those inherently associated with a religious facility in an RS-C zoning district, as required by Section 131.B.2.a.

The current plan does not depict any stormwater management facility. Instead, an alternative stormwater management system (Low-Impact Development) is being proposed at

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DPZ's request. Although the type of system has changed, the management requirement has not, which leads me to conclude that the modification is not a change in circumstances.

3. Enlargement of the Religious Facility. As to the increased size of the building, DPZ concluded the increase in size comported with the approved Conditional Use Plan.

CONCLUSION

The Petitioner has diligently pursued establishing the conditional use. I therefore conclude the Petitioner should be granted a two-year extension to obtain all building permits and a three-year extension to complete substantial construction from the date of the decision required to establish the conditional use approved in Howard County Board of Appeals Case No. BA 06-015C.

The evidence before also convinces me that there are changes in the circumstances which led to the original decision to approve the conditional use concerning the stated social and religious activities and hours. However, these are not so significant to warrant denying the requested extensions and the changes are addressable by conditioning approval on the requirement that all weeknight and weekend activities at the second religious facility (the Pentecostal Church of God International Movement in Spanish) end at 10:00 p.m.

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ORDER

Based upon the foregoing, it is this 13th day of May 2008 by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the request of Pentecostal Church of God International Movement in Spanish for a two-year extension to obtain all building permits and a three-year extension to complete substantial construction in Howard County Board of Appeals Case No. BA 06-015C is hereby **GRANTED.**

Provided, however, that:

1. All weeknight and weekend religious and social activities at the religious facility approved in BA Case No. 06-015C (the Pentecostal Church of God International Movement in Spanish to be constructed) shall end at 10:00 p.m.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 5/15/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.